IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.323 OF 2005
IN
FIRST APPEAL NO.170 OF 2005

The Oriental Insurance Co. Ltd. ...Applicant
Vs.
Shilpa Sudhir Phatak & Ors. ...Respondents

Mr N.M. Godbole for the Applicant.
None for the Respondents.

CORAM : A. S. OKA, J.
DATE : APRIL 28, 2006.

P.C.:

1. Contesting Respondents namely the claimants are duly served. None appears for the claimants.

2. Heard Shri Godbole appearing for the Applicant. The Applicant-Insurance Company has challenged the judgment and award made under section 166 of the Motor Vehicles Act, 1988. In case of a fatal accident, compensation of Rs.3,00,000/- alongwith interest has been awarded by the impugned judgment and award. The ground on which Appeal is filed is that on the date of the accident the relevant vehicle was not validly insured with the Applicant-Company. Nevertheless the Tribunal has held the Applicant-Company liable. From the impugned judgment it appears that no evidence was led by the

Applicant.

3. The Appeal is preferred only by the Applicant-Insurance Company. Even if contention raised in the Appeal by the Applicant-Insurance Company is accepted and the Appeal is allowed, the award against insured will remain. Therefore, if the Applicant succeeds in the Appeal, amount can be always recovered from the insured.

4. Hence, no case is made out for grant of stay. Application for stay is rejected. It is made clear that in case the Applicant-Insurance Company succeeds in the Appeal, it will be at liberty to recover the amount from the insured.

JUDGE